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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/841,820	04/25/2001	Jochen Wurtz	514413-3872	6300

20999 7590 12/30/2009

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EXAMINER	
PRYOR, ALTON NATHANIEL	
ART UNIT	PAPER NUMBER
1616	
MAIL DATE	DELIVERY MODE
12/30/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	09/841,820	WURTZ ET AL.	
	Examiner	Art Unit	
	ALTON N. PRYOR	1616	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 December 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☒ The period for reply expires *3* months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *16,21,23,25 and 28-32*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Alton N. Pryor/
Primary Examiner, Art Unit 1616

Addressing the Additional comments:

The Examiner argues that Pappas-Fader was used in the rejection of record because Pappas-Fader suggests compositions that may contain anilofos, ALS inhibitors (sulfornylurea compounds) and surfactants such as dialkyl sulfosuccinate. Pappas-Fader also teaches that the compositions can exiisted as solutions. The Examiner maintains that solutions indicates that the substances combined are dissolved in the mixture. JP '202 was employ to demonstrate that di-(2-octyl)sulfosuccinate, which is an isomer of di-(2-ethylhexyl)sulfosuccinate, is employed in herbicidal compositions. For this reason, it would have been obvious to employ the di-(2-ethylhexyl)sulfoscuccinate in Pappas-Fader's formulation. See rejection of record for further arguments on this subject.

Pappas-Fader may not teach or suggest the employment of a sulfosuccinate to stabilize a sulfonylurea herbicide and USPN '600 or '912 may not teach applicants' use of sulfosuccinate to stabilize a sulfonylurea. However, Pappas-Fader does suggest a composition that can contain a sulfonylurea plus a sulfosuccinate. In such an instance the sulfonylurea would automatically be stabilized by the sulfosuccinate since the claims recite the same ingredient combination.

The reason why the Examiner is maintaining that he is not convinced that it is the alkylsulfosuccinate which is responsible for the stabilization of the sulfonylureas is as follows. Table 1 on page 38 employ an alkyl sulfosuccinate plus sulfonylurea. None of the examples in Table 1 on page 38 are without alkyl sulfosuccinate. Therefore, Table 1 on page 38 does not make it definite that alkyl sulfosuccinates enhance the stability of sulfonylureas. The Examiner also understands Applicant intention to use Table 2 compositions/results as comparative Examples to Table 1 compositions/results. However, the Examiner does not find the comparative results of Table 2 useful to compare to the inventive results in Table 1 because the concentration of active(s) appear to differ greatly. The question are: Would the concentration of actives (iodosulfuron, fenoxaprop-ethyl and mefenpyr-diethyl) impact the stability of the iodosulfuron (Compare the actives and their concentrations of VIII and IX in Table 1 to the actives and their concentrations of 1 and 2 in Table 2)?, Are the results in Tables I and Table II obtained under the same conditions? and Are Tables I and II a side-by-side comparison? In addition composition III in Table 1 has no direct comparison in Table 2 since III contains only iodosulfuron as the active whereas 1 and 2 in Table 2 uses three actives (iodosulfuron, fenoxaprop-ethyl and mefenpyr-diethyl). With these actives/concentration differences between the inventive composition and the comparative compositions it is difficult to conclude, without a doubt, that Applicant's use of instant sulfosuccinates stabilizes iodosulfuron. If Applicant is able to favorably convince the Examiner that this is so, the Examiner maintains that the potentially unexpected results would not be commensurate in scope with the claims. Note, Applicant claims recite ALS inhibitors (sulfonylureas) broadly whereas examples only use foramsulfuron-N-butyl, mesosulfuron-Na and iodosulfuron. Applicant's claims also recite sulfosuccinates with broad formula I when only two (Triton GR 7 ME and Na-DOS) have been employed in the Examples. For these reason the results do not appear clear cut.

The Examiner's arguments to previous comments are maintained and can be found in office action mailed 9/18/09.